UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1995/116
31 January 1995
ORIGINAL : ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-first session
Item 19 of the provisional agenda

REPORT OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES ON ITS FORTY-SIXTH SESSION

Letter dated 5 January 1995 from the Permanent Representative of Norway and the Chargé d'Affaires of the Permanent Mission of Finland addressed to the Commission on Human Rights

By its resolution 1994/26, the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to transmit the Declaration of Minimum Humanitarian Standards adopted by a group of experts at a meeting in Turku (Abo), Finland in December 1990 to the Commission on Human Rights and recommended that the Commission examine the Declaration with a view to its further elaboration and eventual adoption.

We hereby have the honour to enclose a revised version of said Declaration and a background paper by the Norwegian Institute of Human Rights (Oslo) and the Abo Akademi University Institute for Human Rights (Turku/Abo), and will kindly ask that this document be circulated as a document of the Commission on Human Rights.

(Signed): Bjorn Skogmo
Ambassador
Permanent Representative
Permanent Mission
of Norway

(Signed): Risto Veltheim
Chargé d'Affaires
Permanent Mission
of Finland

GE.95-10469

DECLARATION OF MINIMUM HUMANITARIAN STANDARDS

Adopted by an expert meeting convened by the Institute for Human Rights, Åbo Akademi University, in Turku/Åbo, Finland, 30 November - 2 December 1990 and revised following a meeting at the Norwegian Institute of Human Rights in Oslo, Norway, on 29-30 September 1994.

Recalling the reaffirmation by the Charter of the United Nations and the Universal Declaration of Human Rights of faith in the dignity and worth of the human person;

Considering that situations of internal violence, ethnic, religious and national conflicts, disturbances, tensions and public emergency continue to cause serious instability and great suffering in all parts of the world;

Considering that situations of internal violence, ethnic, religious and national conflicts, disturbances, tensions and public emergency continue to cause serious instability and great suffering in all parts of the world;

Alarmed by the increase in the number and brutality of violations of human rights and humanitarian norms in such situations;

Concerned that in such situations human rights and humanitarian principles have often been violated;

Recognizing the importance of respecting existing human rights and humanitarian norms;

Noting that international law relating to human rights and humanitarian norms applicable in armed conflicts does not adequately protect human beings in situations of internal violence, ethnic, religious and national conflicts, disturbances, tensions and public emergency;

Confirming that any derogations from obligations relating to human rights during a state of public emergency must remain strictly within the limits provided for by international law, that certain rights can never be derogated from and that humanitarian law does not admit of any derogations on grounds of public emergency;

Confirming further that measures derogating from such obligations must be taken in strict conformity with the procedural requirements laid down in those instruments, that the imposition of a state of emergency must be proclaimed officially, publicly, and in accordance with the provisions laid down by law, that measures derogating from such obligations will be limited to the extent strictly required by the exigencies of the situation, and that such measures must not discriminate on the grounds of race, colour, sex, language, religion, social, national or ethnic origin;

Recognizing that in cases not covered by human rights and humanitarian instruments, all persons and groups remain under the protection of the principles of international law derived from established custom, from the principles of humanity and the dictates of public conscience;

Believing that it is important to reaffirm and develop principles governing behaviour of all persons, groups, and authorities in situations of internal violence, ethnic, religious and national conflicts, disturbances, tensions and public emergency;

Believing further in the need for the development and strict implementation of national legislation applicable to such situations, for strengthening co-operation necessary for more efficient implementation of national and international norms, including international mechanisms for monitoring, and for the dissemination and teaching of such norms;

Now, therefore ...
Proclaims this Declaration of Minimum Humanitarian Standards

Article 1

1. This Declaration affirms minimum humanitarian standards which are applicable in all situations, including internal violence, ethnic, religious and national conflicts, disturbances, tensions, and public emergency, and which cannot be derogated from under any circumstances. These standards must be respected whether or not a state of emergency has been proclaimed.

2. The present standards shall not be interpreted as restricting or impairing the provisions of any international humanitarian or human rights instruments.

Article 2

These standards shall be respected by, and applied to all persons, groups and authorities, irrespective of their legal status and without any adverse discrimination.

Article 3

1. Everyone shall have the right to recognition everywhere as person before the law. All persons, even if their liberty has been restricted, are entitled to respect for their person, honour and convictions, freedom of thought, conscience and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction.

2. The following acts are and shall remain prohibited:
   a) violence to the life, health and physical or mental well-being of persons, in particular murder, torture, mutilation, rape, as well as cruel, inhuman or degrading treatment or punishment and other outrages upon personal dignity;
   b) collective punishments against persons and their property;
   c) the taking of hostages;
   d) practicing, permitting or tolerating the involuntary disappearance of individuals, including their abduction or unacknowledged detention;
   e) pillage;
   f) deliberate deprivation of access to necessary food, drinking water and medicine;
   g) threats or incitement to commit any of the foregoing acts.

Article 4

1. All persons deprived of their liberty shall be held in recognized places of detention. Accurate information on their detention and whereabouts, including transfers, shall be made promptly available to their family members and counsel or other persons having a legitimate interest in the information.

2. All persons deprived of their liberty shall be allowed to communicate with the outside world including counsel in accordance with reasonable regulations promulgated by the competent authority.

3. The right to an effective remedy, including habeas corpus, shall be guaranteed as a means to determine the whereabouts or the state of health of persons deprived of their liberty and for identifying the authority ordering or carrying out the deprivation of liberty. Everyone who is deprived of his or her liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of the detention shall be decided speedily by a court and his or her release ordered if the detention is not lawful.

4. All persons deprived of their liberty shall be treated humanely, provided with adequate food and drinking water, decent accommodation and clothing, and be afforded safeguards as regards health, hygiene, and working and social conditions.

Article 5

1. Attacks against persons not taking part in acts of violence shall be prohibited in all circumstances.

2. Whenever the use of force is unavoidable, it shall be in proportion to the seriousness of the offence or the situation, or the objective to be achieved.

3. Weapons or other material or methods prohibited in international armed conflicts must not be employed in any circumstances.

Article 6

Acts or threats of violence the primary purpose or foreseeable effect of which is to spread terror among the population are prohibited.

Article 7

1. All persons have the right to remain in peace in their homes and their places of residence.

2. The displacement of the population or parts thereof shall not be ordered unless their safety or imperative security reasons so demand. Should such displacements have to be

carried out, all possible measures shall be taken in order that the population may be transferred and received under satisfactory conditions of shelter, hygiene, health, safety, and nutrition. Persons or groups thus displaced shall be allowed to return to their homes or their places of residence as soon as the conditions which made their displacement imperative have ceased. Every effort shall be made to enable those so displaced who wish to remain together to do so. Families whose members wish to remain together must be allowed to do so. The persons thus displaced shall be free to move around in the territory, subject only to the safety of the persons involved or reasons of imperative security.

3. No persons shall be compelled to leave their own territory.

Article 8

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his or her life.

2. In addition to the guarantees of the inherent right to life, and the prohibition of genocide, in existing human rights and humanitarian instruments, the following provisions shall be respected as a minimum.

3. In countries which have not yet abolished the death penalty, sentences of death may be imposed only for the most serious crimes. Sentences of death shall not be carried out on pregnant women, mothers of young children or on children under eighteen years of age at the time of the commission of the offence.

4. No death sentence shall be carried out before the expiration of at least six months from the notification of the final judgment confirming such death sentence.

Article 9

No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence without previous judgment pronounced by a regularly constituted, independent and impartial court affording all the judicial guarantees which are recognized as indispensable by the community of nations. In particular:

a) the procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him or her, shall provide for trial within a reasonable time, and shall afford the accused before and during his or her trial all necessary rights and means of defence;
b) no one shall be convicted of an offence except on the basis of individual penal responsibility;
c) anyone charged with an offence is presumed innocent until proven guilty according to law;
d) anyone charged with an offence shall have the right to be tried in his or her presence;
e) no one shall be compelled to testify against himself or herself or to confess guilt;

f) no one shall be liable to be tried or punished again for an offence for which he or she has already been finally convicted or acquitted in accordance with the law and penal procedure;
g) no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under applicable law, at the time when it was committed.

Article 10

Every child has the right to the measures of protection required by his or her condition as a minor and shall be provided with the care and aid the child requires. Children who have not yet attained the age of fifteen years shall not be recruited in or allowed to join the armed forces or armed groups or allowed to take part in acts of violence. All efforts shall be made not to allow persons below the age of eighteen to take part in acts of violence.

Article 11

If it is considered necessary for imperative reasons of security to subject any person to assigned residence, internment or administrative detention, such decisions shall be subject to a regular procedure prescribed by law affording all the judicial guarantees which are recognized as indispensable by the international community, including the right of appeal or to a periodical review.

Article 12

In every instance, the wounded and sick, whether or not they have taken part in acts of violence, shall be protected and treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. There shall be no distinction among them on any grounds other than their medical condition.

Article 13

Every possible means shall be taken, without delay, to search for and collect wounded, sick and missing persons and to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead; prevent their being despoiled or mutilated, and to dispose of them with respect.

Article 14

1. Medical, religious and other humanitarian personnel shall be respected and protected and shall be granted all available help for the performance of their duties. They shall not be compelled to carry out tasks which are not compatible with their humanitarian missions.

2. Under no circumstances shall any person be punished for having carried out medical activities compatible with the principles of medical ethics, regardless of the person benefitting therefrom.

Article 15

In situations of internal violence, ethnic, religious and national conflicts, disturbances, tensions or public emergency, humanitarian organizations shall be granted all of the facilities necessary to enable them to carry out their humanitarian activities and, in particular, provide humanitarian access and relief to the population.

Article 16

In observing these standards, all efforts shall be made to protect the rights of groups, minorities and peoples, including their dignity and identity.

Article 17

The observance of these standards shall not affect the legal status of any authorities, groups, or persons involved in situations of internal violence, ethnic, religious and national conflicts, disturbances, tensions or public emergency.

Article 18

All governments, intergovernmental organizations and nongovernmental organizations, including the United Nations, the specialized agencies of the United Nations, other inter-governmental and regional organizations, UN special rapporteurs, groups and committees, peace-keeping forces, representatives and operational entities shall endeavour to ensure that all persons, groups and authorities fully respect the present standards in all circumstances.

Article 19

All persons, groups and authorities shall be accountable for observance of the present standards. There shall be individual responsibility for serious violations of international humanitarian law, including genocide and crimes against humanity. States shall ensure that such crimes are prosecuted before national courts or international tribunals.

Article 20

No restriction upon or derogation from any of the fundamental rights of human beings recognized or existing in any country by virtue of law, treaties, regulations, custom, or principles of humanity shall be admitted on the pretext that the present standards do not recognize such rights or that they recognize them to a lesser extent.

DECLARATION OF MINIMUM HUMANITARIAN STANDARDS

Background Paper

by the Norwegian Institute of Human Rights (Oslo)
and the Åbo Akademi University Institute for Human Rights (Turku/Åbo, Finland)[1]

There has been a growing recognition by the international commmunity that situations of internal violence, ethnic, religious and national conflicts, disturbances, tensions and public emergency cause serious and increasing instability and great suffering in all parts of the world. International law relating to human rights and humanitarian norms applicable in armed conflicts does not adequately protect human beings in such situations. Hence, the necessity to advance a new Declaration of Minimum Humanitarian Standards.

The concept of a declaration of minimum humanitarian standards was first discussed in the 1980s. The drafting leading to the present text was undertaken, first, at an expert meeting convened by the Norwegian Institute of Human Rights in Oslo in 1987, which produced the Oslo Statement on Norms and Procedures in Times of Public Emergency or Internal Violence, second, at an expert meeting convened by the Åbo Akademi University Institute for Human Rights in Turku/Abo, Finland in 1990, which adopted a Declaration of Minimum Humanitarian Standards. At another meeting at the Norwegian Institute of Human Rights in Oslo in September 1994, proposals were made for some changes, which are incorporated in the text attached to this background paper.

The Declaration reaffirms an irreducible core of humanitarian norms and human rights which must be respected in all situations and at all times, a safety net independent of any arguments or excuses that a particular conflict is not addressed by existing international law. With focus on the nature of contemporary conflicts, the text provides that "(t)hese standards shall be respected by, and applied to all persons, groups and authorities, irrespective of their legal status and without any adverse discrimination"[2]. The prospects for humanizing internal violence are greatly improved by directing the obligation to abide by essential humanitarian principles to all sides involved, including non-governmental actors.

All derogations are prohibited, but the importance of the Declaration goes far beyond the technical problem of states of emergency and derogations. The Declaration addresses also the need to respect fundamental principles of international humanitarian law in all

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[1] The background paper was drafted by Asbjørn Eide, Allan Rosas and Theodor Meron.

[2] This approach attempts to overcome one of the difficulties encountered in applying such human rights instruments as the International Covenant on Civil and Political Rights to situations of internal violence, i.e., that the obligations that it states are addressed primarily to governments (vertical applicability). Unless some obligations are also addressed to the groups fighting either the government or each other (horizontal applicability, *Drittwirkung*), governments are unlikely to accept and respect minimum humanitarian standards.

circumstances. It is designed to avoid the pitfalls of the never ending debates on thresholds of applicability and complex legal characterizations of different types of conflicts.

The Declaration should, of course, be respected as minimum humanitarian standards in all conflict situations, thus eliminating obstacles to ensuring respect of human rights posed by the tendency to engage in characterizations of conflicts. This would be particularly pertinent to situations of all kinds of internal violence, and the grey zone between war and peace. It is generally recognized that situations of internal conflict or civil strife represent the most difficult context for the protection of the human person. In situations which fall short of an armed conflict, humanitarian law might not apply, but internal violence might lead a state to declare a public emergency and suspend many essential protections. Among essential rights which some commentators consider derogable are guarantees of due process, the humane treatment of detainees and freedom of movement.

The Declaration draws on major principles of both humanitarian and human rights instruments. It is based on the fundamental principle of humanity which underlies all such instruments. Many of its provisions codify minimum standards already recognized by extant human rights or humanitarian law. Among the standards incorporated in the Declaration are core judicial or due process guarantees, limitations on excessive use of force and on means and methods of combat, the prohibition of deportations, rules pertaining to administrative or preventive detentions, and guarantees of humanitarian assistance.

Although there are many existing treaties and identifiable standards, significant problems remain in four areas:

(1) Where the threshold of applicability of international humanitarian law is not reached;

(2) Where the State in question has not ratified the relevant treaty or instrument;

(3) Where derogation from the specified standards is invoked; and

(4) Where the actor is not a government, but some other group.

These difficulties are compounded by the inadequacy of the non-derogable provisions of human rights instruments, the weakness of international monitoring and control procedures, and the need to define the character of the conflict situations.

Experience indicates that in situations of internal violence, normal constitutional and other legal checks and balances are singularly ineffective. Efforts have already been made to address some of the violations typical of these situations, but the problems remain unresolved. The Declaration provides a set of universal, internationally accepted standards that can more easily be applied. Of course, as stated in the revised Article 1 contained in the attached draft, the minimum humanitarian standards shall not be interpreted as restricting or impairing the provisions of any existing international humanitarian or human rights instruments.

Problems encountered in the recent and tragic conflicts in Rwanda, Liberia, Somalia,

Trans-Caucasian region and elsewhere have demonstrated that the minimum humanitarian norms listed and confirmed in the Declaration are necessary in such situations[3]. In Bosnia and other parts of the former Yugoslavia, observance of a set of minimum humanitarian standards which are politically and legally neutral and carry no presumption of any particular status of any of the parties involved in the conflict, could have saved many lives.[4]

The Declaration (the new Article 18, contained in the attached text) contemplates a decentralized enforcement of its standards by everybody who can help and who is involved in monitoring, reporting, peace-keeping etc., which includes of course both governments and intergovernmental and non-governmental organizations, as well as thematic groups and rapporteurs and special country rapporteurs appointed by the United Nations. All UN organs, CSCE, OAS, OAU, would be called upon to do their best to ensure that all persons, groups and authorities, including those under their own authority, fully respect the Declaration's standards in all circumstances.

All these organs, and the media as well, should refer to the Declaration as a statement of accepted normative standards. Governments, authorities, groups and individuals should be urged fully to comply with these standards. Of course, the Declaration would face problems of enforcement similar to those encountered by other international instruments. The simplified normative scheme should make evasion more difficult, however. Additionally, because of its essential simplicity, the Declaration could become a useful source of indicators which should guide governmental and non-governmental organizations in giving early warnings of violations. The Declaration will become an important tool for education, dissemination, monitoring, implementation and enforcement.

Although the Declaration's goal is humanitarian rather than prosecutorial, there is a clear connection between humanitarian behaviour and the criminal consequences of violations. The attached text of the Declaration contains, therefore, a new Article 19 on accountability and criminal responsibility.

The Declaration of Minimum Humanitarian Standards could be particularly useful for avoidance of large refugee outflows in countries of origin, and creating the minimum humanitarian conditions allowing solutions in countries of repatriation or resettlement.

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[3] In neither Rwanda or Liberia, for example, would the Hague Convention No. IV of 1907 be applicable, nor would the four Geneva Conventions of 1949, except, of course, Article 3, but that is far from enough. Liberia is not even a party to the International Covenant on Civil and Political Rights, incidentally. In all of these conflicts insistence on the application of the minimum humanitarian standards could have made a difference. In conflicts such as those in Liberia and Somalia, there is no effective government to which traditional human rights instruments could be addressed.

[4] In Bosnia, the international community has chosen to treat the ensemble of the situation in Yugoslavia as an international armed conflict to which the entire corpus of international humanitarian law was applicable, that is, the Hague No. IV convention, genocide, crimes against humanity and the grave breaches of the Geneva conventions. Apart from the criminal aspects, however, the declaration could have been immensely useful in Yugoslavia.

There is already a growing recognition that human rights and humanitarian law abuses are among the major causes of refugee problems. It may be possible to prevent or reduce future refugee flows if we pay closer attention to the human rights/humanitarian situations in countries of origin. But this is not the only area of concern. The search for effective and durable solutions demands a new approach, in which we would consider the human rights/humanitarian situations in both the country of origin and the host country.

In other words, the new approach extends our field of vision on both the geographic (i.e. host countries and countries of origin) and the demographic (i.e. all displaced persons, not just "refugees") levels. We must pay attention not only to refugee-specific problems (refoulement, expulsion, physical attacks and detention under inhumane conditions), but to the security and well being and the fulfillment of the basic needs of the population as a whole, including refugees and other displaced persons.

The Declaration addresses the basic needs of all persons, including displaced persons, and not simply those who fall within the Convention definition of "refugee". The norms could be helpful at the outset of a potential refugee-producing situation, in assessing the durability and effectiveness of potential solutions, to prevent and reduce refugee outflows, and as part of the standards for protection of those who become refugees or displaced persons nonetheless.

There is a growing acknowledgement of the importance of the concept of the "right to remain". Although the right to remain may be implicit in the right to freedom of movement and related rights, it would be valuable to state the right explicitly, to clearly define it and to strengthen its enforcement. This right is contained in the revised Article 7 contained in the attached text. The right to remain gained an important recognition under the 1994 resolution of the Subcommission on Prevention of Discrimination and Protection of Minorities which "affirm[ed] the right of persons to remain in peace in their homes, on their own lands and in their own countries."

In all these areas, therefore, the Declaration promises to provide a helpful set of humanitarian/human rights standards which can be invoked by the various actors to promote a better protection of the human person in all circumstances. The Declaration of Minimum Humanitarian Standards might become the cornerstone of a more comprehensive approach.

The text of the Turku Declaration has already obtained some measure of promotion, dissemination and recognition. It has been circulated as a document of the Sub-Commission[5], which has also decided to transmit it to the Commission on Human Rights[6] (the unanimous decision by the Subcommission transmitting the Declaration contributes to the confirmation of its customary law character). It has been disseminated as a pamphlet by the Åbo Akademi Institute for Human Rights, and published in the American Journal of International Law[7] and

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[5] UN doc. E/CN.4/Sub.2/1991/55

[6] Sub-Commission resolution 1994/26

[7] vol.85 (1991) p.377.

the International Review of the Red Cross[5]. The Declaration was also submitted by the Finnish delegation to the Moscow meeting on the CSCE Human Dimension, September-October 1991, and some of its elements are reflected in the section on public emergency of the Moscow Document. At the CSCE Human Dimension meeting of September-October 1993 in Warsaw, an informal recommendation was adopted, according to which the participating States 'should lend their support to the idea of further promotion within the United Nations of a declaration on minimum humanitarian standards'. It has been referred to in various other international conferences. The Declaration is thus gaining widespread acceptance. Some NGOs and UN organizations have started to refer to the Declaration as normative standards. Obviously, more must be done.

The text attached to this background paper contains some modifications, which are necessitated by recent conflicts, to the Turku Declaration text transmitted by the Sub-Commission. These are explained below:

Because of the nature of most recent conflicts, the words "ethnic, religious and national conflicts" have been added in all the pertinent paragraphs.

In Article 1, a final clause has been included (originally contained in Article 18 of the Turku Declaration), according to which the minimum standards shall not be interpreted as restricting or impairing the provisions of any international humanitarian or human rights instruments. This modification was thought pertinent to emphasize that the Turku Declaration could not be used to lower the protection provided for by existing conventions and other relevant instruments.

In Article 7, a sentence was added on the right to remain, which, as explained above, is frequently mentioned in discussions of refugee law, and was included in the recent resolution of the Sub-Commission on freedom of movement and internally displaced persons.

In Article 8(3) the language addressing capital punishment, in countries which have not yet abolished the death penalty, has been modified to avoid the implication of the Turku language that imposition of capital punishment was mandatory in some circumstances.

In Article 15, language strengthening the right of humanitarian organizations to provide humanitarian relief has been added.

A new Article 18 has been added (already discussed above), which calls on all governments and organizations to ensure respect for the minimum humanitarian standards.

A new Article 19 has been included (already discussed above) on accountability and individual responsibility.

Article 20 tracks the old Article 18(2). As already mentioned, old Article 18(1) has been moved to Article 1.

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[5] vol.31 (1991) p.328